IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Income Tax Appeal No. 8 of 2003
&
Income Tax Appeal No. 9 of 2003
&
Income Tax Appeal No. 10 of 2003
&
Income Tax Appeal No. 11 of 2003

The Commissioner of Income Tax,
Dehradun and others …….. Appellants

Versus

M/s R.B. Prem Nath & Sons,
16, Municipal Road, Dehradun …….. Respondent

Mr. P. Maulekhi, learned counsel for the Income Tax Department.
Mr. J.N. Puri in person for the respondent.

Hon. P.C. Verma, A.C.J.
Hon. Rajesh Tandon, J.

These appeals are connected for the reason that in all these appeals, same question of law arises for determination, therefore, all these appeals are decided by one and common judgment.

The appeal No. 9 of 2003 for the assessment year 1992-93 has been filed against the judgment of the Income Tax Appellate Tribunal, New Delhi contained in Annexure III bearing ITA No. 3846/ Del. / 96 for the assessment year 1992-93.

Brief facts of the case are that certain lands of the respondent was acquired for the Ministry of Defence, Govt. of India under the Land Acquisition Act, 1894 by two awards. The Notification under Section 4 was issued in the year 1976 and Notification under Section 6 was issued in the year 1977 in one case and Notification under Section 4 was issued in the year 1979 and Notification under Section 6 was issued in the year 1980 in another case. The compensation was paid to the respondent HUF, which was received by him under protest and on his giving security bonds for refund of compensation with interest. Respondent challenged the notification and award by way of writ petitions bearing No. 387/87 and 156/87 in Allahabad High Court. The Division Bench of Allahabad High Court stayed the transfer of the possession of the land pursuant to these Notifications.

No transfer of land has taken place till date. It is brought to the notice of this Court that the petitions were dismissed for non-prosecution, restoration of which are pending at Allahabad High Court. During the pendency of the writ petitions, Ministry of Defence, Govt. of India has requested the State Government that the land in question is no more required as it is not suitable for them and alternative land may be acquired and compensation paid to the respondent may be taken back and be paid towards the alternative land to be acquired as proposed by the Ministry of Defence.

For the Assessment Years 1989-90, 1990-91, 1991-92 and 1992-93, the interest earned on the compensation, which was received by the respondent under protest and on furnishing security bonds, was included in the regular income of the respondent for all these four years for the purpose of computing the income tax to be paid by the respondent.

Appeal No. 312 & 313/DDN/93-94; 102/DDN/94-95 and 103/DDN/94-95 were filed before the Commissioner, Income Tax (Appeals), Dehradun for the assessment year 1989-90, 1990-91, 1991-92 and 1992-93 which were allowed and it was held that after considering the entire material on record that it was not the money of the respondent, the money was held by them in the fiduciary capacity, which is required to be returned would be returned with interest. This finding was affirmed by the Income Tax Appellate Tribunal, New Delhi against which an appeal No. 9 of 2003 for assessment year 1992-93 was filed in which following question has been raised for determination.

> "Whether the Tribunal was right in holding that the assessee has not acquired right to receive interest on the compensation received by the petitioner under the Land Acquisition Act as the writ petition is still pending in the Allahabad High Court?"

The rest of the appeals bearing No. 8/03, 10/03 and 11/03 for the earlier assessment years, have also been decided on the same facts,

therefore, in all these appeals the only question quoted above arises for determination.

It is not disputed that along with other facts, the Government of India, Ministry of Defence has written that acquisition of alternative land and also to recover the amount along with the interest from the respondent HUF. Therefore, finding recorded by the Commissioner, Income Tax (Appeals), Dehradun and Income Tax Appellate Tribunal, New Delhi that the money and the interest is held by the respondent HUF in fiduciary capacity, is based on material on record and the question framed, in fact, does not arise in these appeals in view of these facts. The Commissioner, Income Tax (Appeals), Dehradun and the Income Tax Appellate Tribunal, New Delhi have rightly held that the money with interest thereon was held by the respondent HUF in fiduciary capacity, therefore, the question of law framed is decided in favour of the assessee and against the revenue.

The Commissioner of Income Tax (Appeals), Dehradun while deciding the appeal arising out of the order passed under Section 143 (3) of the Income Tax Act in respect of the assessment years 1989-90, 1990-91, 1991-92 and 1992-93 has recorded a finding that the land acquisition proceedings are not complete as the possession has not been taken and the assessee holds the amount of compensation received in fiduciary capacity for the benefit of the Government. The land in question having not been transferred and mutated in the name of the State, the assessee has not been dispossessed from the land and consequently, the Government has not acquired its land/ property. Section 2(47) of the Income Tax Act defines the transfer in relation to capital asset in the following manner:

> "2(47) Transfer, in relation to a capital asset, includes:
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> (i) the sale, exchange or relinquishment of the asset; or
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> (ii) the extinguishment of any rights therein; or
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> (iii) the compulsory acquisition thereof under any law; or
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> (iv) in a case where the asset is converted by the owner thereof into, or is treated by him as, stock-in-trade of a business carried on by him, such conversion or treatment;

(v) any transaction involving the allowing of the possession of any immovable property to be taken or retrained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882 (4 of 1982); or

(vi) any transaction (whether by way of becoming a member of, or acquiring shares in, a co-operative society, company or other association of persons or by way of any agreement or any arrangement or in any other manner whatsoever) which has the effect of transferring, or enabling the enjoyment of, any immovable property.

Explanation – For the purposes of sub-clauses (v) and (vi), "immovable property" shall have the same meaning as in clause (d) of section 269UA."

In view of the aforesaid definition, the transfer takes place on the sale or extinguishment of any rights therein, the appellate Court, therefore has rightly held that since no orders under Section 16 & 17 of the Land Acquisition Act, 1894 were passed in respect of the lands in dispute, therefore, neither the possession of these lands has taken place nor the transfer of the same from the assessee to the Government has taken place.

We are also supported by the decision of the High Court of Delhi reported in 154 ITR 478 in the case of Harish Chandra & others Vs Commissioner of Income Tax. The observations are quoted below:

> "The taking of the possession of the acquired land is the immediate consequence of the award under s. 11. The award gives the Collector the right to take possession. It is only when the possession of the land is taken that the vesting takes place. The word "vest" has not get a fixed connotation, but in the Acquisition Act two consequences follow from the taking of the possession. Firstly, it is the vesting of the title of the land absolutely in the Government and, secondly, such vesting is free from all encumbrances.

To attract the liability to tax under s. 45, it is sufficient if, in the accounting year, profits and gains have arisen out of the transfer of the capital asset, in other words, the assessee had a right to receive the profits."

Similar view has been taken in the case of R.L. Jain Vs D.D.A. & others reported in 2004 AIR SCW 1627, in which it has been held as under:

"For the parity of reasons the words "from the date on which he took possession of the land" occurring in S. 28 of the Act would also mean lawful taking of possession in accordance with S. 16 or 17 of the Act."

We, therefore, are of the opinion that the present case being not a transfer under Section 2(47) of the Income Tax Act, hence, the amount received by the assessee in respect of these lands with reference to the two awards of the SLO were in fiduciary capacity. The Appellate Court has also recorded a finding that the *Karta* of the assessee HUF has already undertaken to inform the Department about the decisions of the Hon'ble High Court of Allahabad on its writs and also to pay taxes on compensation and interest thereon on receipt basis.

In view of the aforesaid facts and circumstances, we find no merit in the aforesaid contention of the Department. Therefore, we are satisfied that the Income Tax appeals preferred by the Department raise no substantial question of law so as to exercise the jurisdiction under Section 260A of the Income Tax Act.

Therefore, the appeals are devoid of merit and are hereby dismissed. No order as to costs.

(Rajesh Tandon, J.) **(P.C. Verma, A.C.J.)**

Dt.01.04.2004.
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